IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
***
:: ORDER ::

S.B. CIVIL WRIT PETITION NO.137/2004-STATE BANK OF BIKANER & JAIPUR VS. ADDL. DISTRICT & SESSIONS JUDGE NO.2, JOHDPUR UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

DATE OF ORDER : 4.2.2005

PRESENT

REPORTABLE

HON'BLE MR. PRAKASH TATIA,J.

Mr. Jagdish Vyas, for the petitioner.
Mr. D.R.Bhandari, for the respondent
Mr. S.N.Tiwari, Dy.GA, for the State.

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BY THE COURT:

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 17.12.2003 by which the executing court, Addl. District Judge No.2, Jodhpur in Execution Case No.13/2002 directed the petitioner bank to deposit Rs.5,82,442/-.

Brief facts of the case are that a money decree was obtained by M/s.Mohd. Nishar & Company respondent no.2 against the respondent no.3 State of Rajasthan and respondent no.4 Executive Engineer, PHED, Pali. In execution of the said decree, an order was issued by the

executing court on 22nd March, 2003 restraining the petitioner bank from making any payment to the PHED, Pali out of the account no.71 to anybody till the order is passed by the executing court.

In response to the above notice dated 22nd March, 2003 (Annex.1), the petitioner bank submitted a reply to the executing court on 29th March, 2003 (Annex.2) stating therein that the account no.71 is in the name of the Superintending Engineer, PHED, Pali and in the nature of this type of account, no money of a department remains deposited with the petitioner bank. As per instructions received from the Government from time to time and in pursuance of the order passed by the concerned department, on issuance of cheques, the amount is paid to the concerned person. The petitioner bank, thereafter, stated that initially bank pays the amount to the order of the State Government and of the department to the person in whose favour the cheque is issued and, thereafter, the said amount is re-paid by the State Government. After writing it, the petitioner bank informed the court that the petitioner bank has stayed the payment to the judgment-debtor.

On 12th May, 2003, the petitioner bank submitted an application before the court stating therein that there is no credit balance of the respondent State or the Department, therefore, it is not possible for the bank to deposit the amount as demanded by the executing court.

The executing court observed that since the petitioner bank admitted that they have judgment-debtor's account having no.71 with the bank and in that account, the amount is deposited and withdrawn and the bank also gave the over draft facility and since bank submitted in writing on 23rd March, 2003 that the bank has stopped withdrawal of the amount from the account, therefore, it appears that the petitioner bank has raised objection to delay the recovery proceedings in the execution case.

Learned counsel for the petitioner submits that it is clear from Order 41 Rule 46 and particularly, Rule 46(b) CPC that an order can be passed against the garnishee to pay into court the amount due from him to the judgment-debtor. The court cannot ask the petitioner bank to advance money either to State or its department by crediting any amount of the bank in the account no.71 of the judgment-debtor and thereafter, deposit it in court to satisfy the decree. According to learned counsel for the petitioner, in fact, this is a facility provided by the bank to pay the amount in advance to the account holder on instruction of the State Government and the State Government, thereafter, re-pay the said advance account. According to learned counsel for the petitioner in view of the above facts, the court cannot pass any order having effect to create a liability over the garnishee and to pay the amount under assumption that garnishee may recover the

amount from either the judgment-debtor or any other person.

Learned counsel for the respondent-decree holder vehemently submitted that bank itself once stopped the withdrawal of the amount cannot say that the bank had no money of the judgment-debtor with them. It is also submitted that the bank clearly stated in the letter dated 29th March, 2003 that they pay the amount to the account holder and that amount is paid by the State Government, therefore, the same procedure may be adopted and the bank may pay the amount to satisfy the decree and may recover the amount from the State Government. It is also submitted that it is nobody's case that no money is lying in the credit of the account holder. In view of the above, according to learned counsel for the respondent, the executing court has rightly ordered against the petitioner bank.

I considered the submissions of learned counsel for the parties. It is clear from sub-rule (1) of Rule 46 of Order 21 itself that an attachment can be issued against the debt, share and other movable property not in the possession of the judgment-debtor. The court may pass appropriate order restraining the person holding the debt or share in the capital of any corporation to not to pay or disburse the amount. The Rule 46B also provides that what type of order can be passed against the garnishee. It only says that the executing court can pass the order

against the garnishee to pay into Court, “the amount due from him to the judgment-debtor”. The Rule 46D provides that what procedure should be adopted when it is claimed that the debts belongs to some third person, or that any third person had a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same. All the provisions referred above clearly reveals that the executing court has been given power to recover any of the amount of the judgment-debtor, which is in the hands of other. The court has no power to issue order or direction to anybody, may it be usual financier of the judgment-debtor, who is not holding any money of the judgment-debtor to pay to satisfy the debt or decretal amount for the judgment-debtor, may it under assumption that the garnishee is able and can recover the amount from the judgment-debtor or the judgment-debtor will pay to the garnishee.

So far as factual aspect is concerned, the executing court has not held that any of the amount of the judgment-debtor is lying with the petitioner bank. The executing court also did not held that the petitioner under any of the provision of law can be directed to create liability upon itself to pay the amount to the decree holder even under assumption that petitioner may recover the amount either from the judgment-debtor or from State. The executing court only proceeded on

the assumption that since there is a account of the respondent-judgment-debtor with the petitioner bank and transactions are carried in that account and the bank, number of times issued over draft to the judgment-debtor and the petitioner bank even stayed the withdrawal of the amount from the account no.71, therefore, the petitioner bank can be directed to pay the decretal amount for the judgment-debtor. The executing court appears to have not looked into the relevant provision of law to find out for what type of order can be issued against the garnishee. The order of the executing court is, therefore, in violation of the Rule 46B of Order 21 CPC, which authorizes the executing court to direct the garnishee to pay the "amount due from him (garnishee) to the judgment-debtor".

In view of the above, the order of the trial court is absolutely contrary to law and is virtually a direction to create liability for the bank, rather than to pay any debt amount or deposit amount of the judgment-debtor to the decree holder.

Hence, the writ petition of the petitioner is allowed and the order dated 17.12.2003 passed by the trial court is quashed and set aside.

(Prakash Tatia), J.

c.p.goyal/-